

THIS OPINION IS NOT INTENDED  
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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

98 DEC 16 PM 2:31

In re: ) Case No. 98-14507  
)  
)  
TERRY G. LANE, ) Chapter 7  
)  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

NORTHERN DISTRICT OF OHIO  
CLEVELAND

The Debtor was injured in an automobile accident before he filed this Chapter 7 case. He disclosed the personal injury claim in his bankruptcy schedules, but then settled it post-petition without the Chapter 7 Trustee's involvement. The Debtor now claims the proceeds as exempt from the bankruptcy estate. The Trustee objects to the exemption both because of the unilateral settlement of the claim and because he argues that the proceeds of a soft tissue injury claim are not exempt. (Docket 7, 9). For the reasons stated below, the Trustee's Objection is overruled.

**JURISDICTION**

This Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

**FACTS**

The parties waived an evidentiary hearing and submitted this matter on Stipulations of Fact and Briefs. (Docket 19, 15, 18). The verbatim stipulated facts are:

1. The Debtor's case was commenced by filing a Voluntary Petition on June 15, 1998.

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2. Prior to the commencement of the Debtor's case under Title 11 of the United States Code, and on August 6, 1997, the Debtor was involved in an automobile accident with Donna K. Snodgrass.
3. The Debtor's schedules, namely Item 20 in Schedule B, annexed to the Petition, reflected the Debtor's personal injury claim (the "PI claim") with an ascribed value of \$3,500.00.
4. The § 341 Meeting of Creditors in the Debtor's case was held on July 20, 1998 at 9:30 a.m.
5. The Meeting of Creditors was partly held and adjourned to August 3, 1998 at 9:30 a.m. as the Debtor was to furnish the Trustee information regarding the PI claim.
6. On July 20, 1998, later in the day and on the same day as the § 341 Meeting of Creditors, the Debtor and the Debtor's tort counsel, Hollace B. Weitzel, settled the PI claim for \$5,500.00 without notice to, advice of, or consent by the Trustee.
7. The Debtor claimed in Schedule C, under Ohio Revised Code § 2329.66(A)(12)(c) an exemption of \$5,000 with respect to bodily injury claims due to an auto accident and reflected the current market value as "unknown."
8. Attached hereto as Exhibit "A" and incorporated herein by reference, is a document captioned "Settlement Agreement" that reflects the total recovery on the PI claim was \$5,500.00 and indicates the disbursements made by tort counsel related to the Settlement.<sup>1</sup>
9. Exhibit "B" attached hereto and incorporated herein by reference is a copy of the Release issued by the Debtor to the tortfeasor with respect to the personal injury claim.
10. Attached hereto as Exhibit "C" and incorporated herein by reference is a representation in writing made by the Debtor's tort counsel and approved by the Debtor, which reflects the medical expenses incurred and loss of wages claimed to have been sustained by the Debtor.

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<sup>1</sup> After payment of legal fees and amounts advanced, the net proceeds total \$3,600.23. (Exhibit A).

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11. The injuries sustained by the Debtor as a result of the motor vehicle collision were all soft tissue injury, there was no loss of limbs nor broken bones.
12. The settlement was not allocated with respect to the amount applied to compensate for pain and suffering or pecuniary loss, or soft tissue injury.

**DISCUSSION**

**I.**

The Trustee objects to the Debtor's exemption of the personal injury claim proceeds arguing that: (1) the Debtor unlawfully settled the claim post-petition and interfered with the Trustee's ability to administer the case; and (2) there is no exemption with respect to these proceeds under Ohio Revised Code § 2329.66(A)(12)(c) because the injury was not serious enough. The Debtor argues that his conduct does not bar his exemption and the claim proceeds are exempt under Ohio law.

**II.**

Almost all interests in property which an individual has at the commencement of a case become property of the bankruptcy estate. 11 U.S.C. § 541. The parties do not dispute that the personal injury claim was property of the estate. A debtor's interest in certain property may be exempted or removed from the estate under 11 U.S.C. § 522. Ohio has specified that its residents may not choose the federal bankruptcy exemptions, but may instead exempt property from the reach of creditors as provided by Ohio law. 11 U.S.C. § 522(b)(1) and Ohio Rev. Code § 2329.662. Looking to Ohio law, the issue is whether the exemption set forth in Ohio Revised Code § 2329.66(A)(12)(c) is available to the Debtor. Exemptions are liberally construed in favor of the debtor. *Lester v. Storey (In re Lester)*, 141 B.R. 157 (S.D. Ohio 1991).

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The Chapter 7 Trustee has the “burden of proving that the exemptions are not properly claimed.”

Fed. R. Bankr. P. 4003(c).

**Does the Debtor’s conduct provide a basis to deny his exemption?**

The Trustee requests that the exemption be denied based on the Debtor’s misconduct in settling the claim post-petition, which the Trustee states interferes with his administration of the estate. He cites *In re Stinson*, 221 B.R. 726 (Bankr. E.D. Mich. 1998) in support of this request. The Debtor argues that his conduct is distinguishable from the facts of that case and that he has not jeopardized the administration of this case.

“Bankruptcy courts . . . enjoy inherent power to sanction parties for improper conduct.”

*Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6<sup>th</sup> Cir. 1996).

Numerous cases have noted a court’s authority to deny a debtor’s exemption based on improper conduct. Most of these cases deal with a debtor’s concealment of or failure to schedule an asset, followed by an attempt to exempt that asset. In general, such exemptions are disallowed in cases where there is evidence of bad faith or fraudulent conduct. *Lucius v. McLemore*, 741 F.2d 125, 127 (6<sup>th</sup> Cir. 1984) (“Courts may refuse to allow an amendment where the debtor acted in bad faith or property has been concealed.”). See also *In re Yonikus*, 996 F.2d 866 (7<sup>th</sup> Cir. 1993) (exemption may be denied based on a showing of bad faith or prejudice), *Tignor v. Parkinson (In re Tignor)*, 729 F.2d 977 (4<sup>th</sup> Cir. 1984) (exceptional circumstances may bar a debtor’s amendment of exemptions); *Doan v. Hudgins (In re Doan)*, 672 F.2d 831 (11<sup>th</sup> Cir. 1982) (fraudulent concealment or bad faith may bar exemption).

In the *Stinson* case cited by the Trustee, the bankruptcy court disallowed a Chapter 7 debtor’s exemption with respect to a personal injury settlement because she settled the claim

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without the Trustee's involvement and distributed the proceeds without court approval. The court noted that "there is no principled basis upon which to distinguish this case from the many in which courts have denied exemptions of concealed property." *In re Stinson*, 221 B.R. 726, 732 (Bankr. E.D. Mich. 1998). While the *Stinson* decision does not discuss the existence or requirement of a finding of bad faith or fraudulent conduct, the same bankruptcy judge disallowed a debtor's attempt to exempt an asset that had not been disclosed in *In re Lundy*, 216 B.R. 609 (Bankr. E.D. Mich. 1998). In that case, the court noted that amendments to exemptions may be denied based on bad faith and that a "bad faith determination should be based on the totality of the circumstances . . . ." *Lundy* at 610. Using these standards, the disallowance of an exemption as a result of a debtor's conduct should be based on a finding of bad faith, fraudulent conduct, or other exceptional circumstances.

The Trustee argues that the Debtor's conduct in unilaterally settling his personal injury claim adversely affected the Trustee's ability to administer the estate, although the argument is not detailed.<sup>2</sup> The Court certainly does not condone the Debtor's behavior and, with a more detailed factual record, the Court might have found that the Trustee's request is appropriate. Based on the stipulated facts, however, there is no basis to assess the Debtor's conduct or to find that he acted in bad faith, fraudulently, or that exceptional circumstances exist that warrant denial of this exemption. Absent such facts, the Court declines to deny the Debtor's exemption based on the cited conduct.

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<sup>2</sup> The Trustee does not, for example, challenge the binding effect of the settlement.

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**Are the settlement proceeds exempt under Ohio Revised Code  
§ 2329.66(A)(12)(c)?**

The Trustee argues that the proceeds are not exempt under Ohio Revised Code

§ 2329.66(A)(12)(c). That statute provides that a debtor may exempt from the bankruptcy estate:

[A] payment, not to exceed five thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the person or an individual for whom the person is a dependent.

Ohio Rev. Code Ann. § 2329.66(A)(12)(c) (Banks-Baldwin 1998). The parties dispute the meaning of the term “personal bodily injury.” The Trustee argues that the Debtor has to show that he suffered a broken bone, a loss of limb, or some similar condition in order to come within the exemption. The Debtor contends that a soft tissue injury is sufficient to come within this language.

The Ohio statute does not define “personal bodily injury” and there is no definitive Ohio case law on this issue. It is, however, “apparent that the statute was intended to allow a debtor to claim as exempt up to \$5,000 received as compensation for personal bodily injury—so long as the money is specifically not intended for pain and suffering or actual pecuniary loss.” *Lester v. Storey (In re Lester)*, 141 B.R. 157, 164 (S.D. Ohio 1991). Additionally, an Ohio court has noted that “[w]hile . . . personal bodily injury is not defined, neither at a minimum does it imply a loss of limb. The statute evidences a clear intent to assure a personal injury plaintiff some compensation for bodily injury that will be protected[.]” *Mike v. Rendano*, 1985 WL 7019 at \*2 (Ohio App. August 5, 1985).

In interpreting Ohio law, words and phrases not defined by statute are to be read in context and construed according to the rules of grammar and common usage. Ohio Rev. Code.

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Ann. § 1.42 (Banks-Baldwin 1998). The plain meaning of a statute is normally conclusive.

*Morgan v. Ohio Adult Parole Authority*, 68 Ohio St. 3d 344, 626 N.E. 2d 939 (1994). Accord

*United States v. Ron Pair Enters. Inc.*, 489 U.S. 235 (1989). One source of that plain meaning is

the dictionary. *Roxane Lab., Inc. v. Tracy*, 75 Ohio St. 3d 125, 127, 661 N.E. 2d 1011, 1012

(1996). Black's Law Dictionary offers these definitions:

**Personal** Appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings; or of movable property.

**Bodily Injury** Generally refers only to injury to the body, or to sickness or disease contracted by the injured as a result of injury; including illness caused by nervous shock or injury resulting from rape or attempted rape.

**Injury - Bodily Injury** Physical pain, illness or any impairment of the physical condition. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Model Penal Code, § 210.0, p. 781.

Black's Law Dictionary 1143, 175, 786 (6<sup>th</sup> ed. 1990). "Injury" is "any wrong or damage done to another . . . in his person . . ." *Id.* at 785. These definitions are, to some extent, circular.

Nevertheless, when they are read together, the phrase "personal bodily injury" covers impairment to a person's body. Soft tissue is a part of the body, as it "includes muscles, tendons, fat, fibrous tissue, synovial tissue, vessels, and nerves." Harrison's Principles of Internal Medicine (14<sup>th</sup> ed. Vol. 1, p. 611). The parties stipulated that the Debtor had an injury to his soft tissue.

Consequently, the Court concludes that the Debtor's soft tissue injury is a personal bodily injury within the meaning of the Ohio statute. There is nothing in the language used by the Ohio legislators to support the idea that an individual must lose a limb or break a bone to come within

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this phrase.<sup>3</sup> In fact, the Black's definition suggests that such a misfortune would come under "serious bodily injury," rather than the more general "bodily injury."

The Trustee argues alternatively that the payment on account of a soft tissue injury is comprised solely of amounts for pain and suffering and for actual pecuniary loss. If the settlement did include those items, they would not be exempt under the Ohio statute. There is, however, no evidence to establish those facts. The Debtor claimed an exemption based on a personal bodily injury; the stipulated facts indicate he suffered such an injury and received a payment on account of it. As noted, the Trustee bears the burden of proving his objection to this exemption claim. Fed. R. Bankr. P. 4003(c). The stipulated facts do not contain any evidence that the proceeds of the Debtor's claim include amounts which are attributable to pain and suffering or actual pecuniary loss.<sup>4</sup> Absent such evidence, the personal injury claim proceeds are exempt.

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<sup>3</sup> There are some cases, including those cited by the Trustee, that use loss of a limb as a standard. This "test" seems to have its origins in the legislative history to the comparable federal exemption, 11 U.S.C. § 522(d). That history is not directly relevant to the issue of how to interpret the Ohio statute, although there certainly are situations in which a court could reasonably look to such history for illumination. In this case, however, the courts are essentially unanimous in concluding that the federal legislative history is "largely unhelpful" even to those interpreting the federal language. See, for example, *In re Ciotta*, 222 B.R. 626, 630 (Bankr. C.D. Cal. 1998).

<sup>4</sup> Exhibit C is an undated letter written by the Debtor's tort counsel and approved by the Debtor which indicates that the Debtor incurred medical bills and lost wages as a result of his injury. There is no statement that any amount of the settlement was attributable to the medical bills or the lost wages. Bearing in mind that the party objecting to the exemption has the burden of proof, this letter does not establish that any part of the proceeds fall outside of the exemption language.



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CONCLUSION

For the reasons stated, the Debtor is entitled to exempt the proceeds of his personal injury claim and the Trustee's Objection to the claim of exemption is overruled. A separate order will be entered in accordance with this decision.

Date: 16 Dec 1998

Pat E. Morgenstern-Clarren  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Marvin Sicherman, Esq.  
Alan Anderson, Esq.

By: Joyce L. Gordon, Secretary  
Date: 12/16/98

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In re: ) Case No. 98-14507  
)  
TERRY G. LANE, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this date,

IT IS ORDERED that the Trustee's Objection to the Debtor's claim of exemption is  
overruled.

Date: 16 Dec 1998

Pat E. Morgenstern-Clarren  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Marvin Sicherman, Esq.  
Alan Anderson, Esq.

By: Joyce L. Gordon, Secretary

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